

ORIGINAL



~~EX PARTE OR LATE FILED~~

Susan Wichmann • Director, Federal Regulatory Affairs • phone 202.419.3007 • fax 202.419.3030

August 28, 2002

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-B204
Washington, D.C. 20054

RECEIVED

AUG 28 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: *Ex Parte* Submission in WT Docket No. 02-100

Dear Ms. Dortch:

This letter serves as notification that on August 22, 2002 date Susan Wichmann and Brian Fontes of Cingular Wireless, LLC met with Gary Oshinsky, Jeffrey Steinberg, and Jeanne Kowalski of the Wireless Telecommunications Bureau, to discuss the above-captioned proceeding. We discussed Cingular Wireless' support for a declaratory ruling determining that Anne Arundel County Ordinance is preempted by the FCC's exclusive jurisdiction over RF emissions. Presented at the meeting was a copy of the original ordinance and the emergency ordinance enacted on August 19, 2002.

Pursuant to Section 1.1206(a), an original and one copy of this letter are being filled with your office. Please associate this letter with the files in the above-captioned proceeding.

Please contact us should you have questions concerning the foregoing.

Sincerely,

A handwritten signature in cursive script that reads 'Susan Wichmann'.

Susan Wichmann
Director – Federal Regulatory

Attachment

cc: Gary Oshinsky
Jeffery Steinberg
Jeanne Kowalski

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DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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APR 29 2002

In the Matter of

Federal Preemption of
Anne Arundel County Ordinance
Regulating Radio Frequency Interference

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02-100

File No. _____

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

SUPPLEMENT TO PETITION FOR DECLARATORY RULING

For the convenience of the Commission and commenting parties, Cingular Wireless LLC ("Cingular") hereby supplements its Petition for Declaratory Ruling, filed on April 23, 2002, to include copies of two documents cited in the Petition. Specifically, Cingular is providing copies of (1) Bill No. 93-01, which, upon enactment, amended Anne Arundel County's zoning ordinance and (2) the Letter from David Furth, Chief of the Commercial Wireless Division of the Wireless Telecommunications Bureau, to Roger Kroh, Director of Planning and Development, Johnson County Office of Planning, Development and Codes.

Respectfully submitted,

CINGULAR WIRELESS LLC



By: L. Andrew Tollin
Catherine C. Butcher
WILKINSON BARKER KNAUER, LLP
2300 N Street, N.W.
Washington, D.C. 20037
(202) 783-4141

Its Attorneys

Date: April 29, 2002

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AMENDED
December 17, 2001

COUNTY COUNCIL OF ANNE ARUNDEL COUNTY, MARYLAND

Legislative Session 2001, Legislative Day No. 42

Bill No. 93-01

Introduced by Mrs. Murphy, Chairman
(by request of the County Executive)

By the County Council, November 19, 2001

Introduced and first read on November 19, 2001
Public Hearing set for and held on December 10, 2001
AMENDED December 17, 2001
Public hearing on AMENDED BILL set for January 22, 2002

By Order: Judy C. Holmes, Administrative Officer

A BILL ENTITLED

1 AN ORDINANCE concerning: Zoning - Commercial Telecommunication Facilities

2
3 FOR the purpose of adding certain systems to and removing certain systems from the
4 definition of commercial telecommunication facility; requiring owners and users of
5 commercial telecommunication facilities to obtain zoning certificates of use; altering
6 certain setback requirements in certain districts for certain commercial
7 telecommunication facilities; requiring applicants for permits and certificates of use for
8 commercial telecommunication facilities to post security for removal of the facilities;
9 requiring applicants for permits for commercial telecommunication facilities to notify
10 property owners in a certain area of the anticipated filing of the application; requiring
11 applicants for certificates of use for commercial telecommunication facilities to provide
12 certification that their use will not degrade or interfere with the County's public safety
13 radio systems; requiring certification regarding radio frequency emissions; requiring
14 mitigation of any adverse visual impact when a commercial telecommunication facility
15 is located within sight of certain property; requiring applicants for special exceptions for
16 commercial telecommunication facilities to show exhaustion of efforts to locate on
17 commercially zoned property and to co-locate on existing facilities; adding additional
18 requirements for special exceptions for commercial telecommunication facilities; and
19 generally relating to commercial telecommunication facilities.

EXPLANATION: CAPITALS indicate new matter added to existing law.
[Brackets] indicate matter stricken from existing law.
Underlining indicates amendments to bill.
~~Strikeover~~ indicates matter stricken from bill by amendment.

1 BY repealing and reenacting, with amendments: Article 28, §§1-101(14B); 1-128(a) and (c);

3-103(b)(3); and 12-215.1

Anne Arundel County Code (1985, as amended)

BY adding: Article 28, §10-125(i), (j), (k), and (l)
Anne Arundel County Code (1985, as amended)

SECTION 1. *Be it enacted by the County Council of Anne Arundel County, Maryland,*
That Section(s) of the Anne Arundel County Code (1985, as amended) read as follows:

ARTICLE 28

Title 1. General Provisions

1-101. Definitions – Generally.

(14B) (i) "Commercial telecommunication facility" means a structure such as a tower, antenna, monopole, panel, [or] microwave dish, OR IN-BUILDING WIRELESS COMMUNICATION ENHANCEMENT SYSTEM, including accessory structures, used for the wireless electromagnetic transmission of information.

(ii) "Commercial telecommunication facility" does not include:

1. a satellite earth station;
2. a structure used for amateur or recreational purposes such as ham radio or citizens band radio; [or]
3. a facility owned by a public utility that is used to control the utility's distribution systems[.]; OR
4. A FACILITY OWNED OR OPERATED BY ANNE ARUNDEL COUNTY AND CONSTITUTING A COMPONENT OF ITS PUBLIC SAFETY COMMUNICATION SYSTEM.

1-128. Zoning certificate of use.

(a) Except for a single-family residence, no premises or structure, including a COMMERCIAL TELECOMMUNICATION FACILITY AND A nonconforming use, may be used or altered until a zoning certificate of use is issued by the Department of Inspections and Permits. ALTERATION OF A COMMERCIAL TELECOMMUNICATION FACILITY INCLUDES ANY CHANGE IN CONFIGURATION, TRANSMIT FREQUENCY, OR POWER LEVEL.

(c) A zoning certificate of use is required for each use. FOR A TELECOMMUNICATION FACILITY, THIS INCLUDES THE OWNER AND EACH USER OF THE FACILITY. As long as a use does not change, a zoning certificate of use continues in effect when the ownership of the property changes.

Title 3. Commercial Districts

3-103. Permitted uses; conditional uses.

(b) The following uses are permitted as conditional uses in a C1-Local Commercial District:

(3) commercial telecommunication facilities, provided THAT:

(i) each structure PERMANENTLY LOCATED ON THE GROUND is [located] at least 200 FEET OR one foot for each foot of height, WHICHEVER IS GREATER, from [any existing dwelling] THE PROPERTY LINE OF A:

1. LOT WITHIN A RESIDENTIAL DISTRICT;

2. RESIDENTIALLY OCCUPIED PROPERTY;

3. SCHOOL;

4. PUBLIC PARK; OR

5. PLATTED COMMUNITY RECREATION AREA;

(ii) each structure is set back at least one foot for each foot of height from the property line of an adjoining school or public park;

(iii)(II) [each structure other than a tower, antenna, or monopole is] ACCESSORY STRUCTURES ARE screened from [a] ADJOINING residentially-zoned or residentially-developed property in accordance with Title 9 of this article[and complies with the setbacks of the district in which located]; and

[(iv)](III) the height of [the] A structure PERMANENTLY LOCATED ON THE GROUND does not exceed:

1. for one provider, 130 feet, or 160 feet if [the structure is] on government-owned land;

2. for two providers, 170 feet, or 200 feet if [the structure is] on government-owned land;

3. for three providers, 210 feet, or 240 feet if [the structure is] on government-owned land; and

4. for four or more providers, 250 feet;

Title 10. Miscellaneous Regulations

10-125. Commercial telecommunication facilities.

~~(1) (1) EACH APPLICANT FOR A BUILDING PERMIT FOR CONSTRUCTION OF A~~

ORIGINAL

Bill No. 93-01

Page No. 4

1 COMMERCIAL TELECOMMUNICATION FACILITY SHALL POST CASH, AN IRREVOCABLE BOND,
2 OR AN IRREVOCABLE LETTER OF CREDIT IN THE AMOUNT OF \$50,000 TO REMAIN IN EFFECT
3 THROUGHOUT THE OPERATION AND USE OF THE FACILITY AS SECURITY FOR REMOVAL OF
4 ALL OR ANY PART OF THE COMMERCIAL TELECOMMUNICATION FACILITY; AND
5

6 ~~(2) UNLESS THE APPLICANT HAS POSTED CASH, A BOND, OR A LETTER OF CREDIT~~
7 ~~PURSUANT TO PARAGRAPH (1) OF THIS SUBSECTION, EACH APPLICANT FOR A ZONING~~
8 ~~CERTIFICATE OF USE FOR A COMMERCIAL TELECOMMUNICATION FACILITY SHALL POST~~
9 ~~CASH, AN IRREVOCABLE BOND, OR AN IRREVOCABLE LETTER OF CREDIT IN THE AMOUNT~~
10 ~~OF \$10,000 TO REMAIN IN EFFECT THROUGHOUT THE OPERATION AND USE OF THE FACILITY~~
11 ~~AS SECURITY FOR REMOVAL OF ALL OR ANY PART OF THE COMMERCIAL~~
12 ~~TELECOMMUNICATION FACILITY.~~

13
14 ~~(H) (I)~~ EACH APPLICANT FOR A BUILDING PERMIT FOR CONSTRUCTION OF A COMMERCIAL
15 TELECOMMUNICATION FACILITY PERMANENTLY LOCATED ON THE GROUND SHALL:

16
17 (1) NOT LESS THAN TWO WEEKS AND NOT MORE THAN 60 DAYS BEFORE THE FILING
18 OF THE APPLICATION, GIVE NOTICE OF THE APPLICATION, BY CERTIFIED MAIL, RETURN
19 RECEIPT REQUESTED, TO ALL OWNERS OF PROPERTY LOCATED WITHIN 250 FEET OF THE
20 PROPERTY LINE OF THE SITE OF THE PROPOSED FACILITY AS LISTED ON THE TAX ROLLS OF
21 THE COUNTY; AND
22

23 (2) FILE WITH THE APPLICATION:

24
25 (I) A LIST OF THE NAMES AND ADDRESSES OF ALL PROPERTY OWNERS WHO
26 WERE NOTIFIED;

27
28 (II) A COPY OF THE NOTICE THAT WAS SENT;

29
30 (III) COPIES OF ALL RETURN RECEIPTS RECEIVED BY THE APPLICANT;

31
32 (IV) COPIES OF THE ENVELOPES OF ANY NOTICES THAT WERE RETURNED AS
33 UNDELIVERED; AND

34
35 (V) AN AFFIDAVIT BY THE APPLICANT THAT NOTICE WAS GIVEN AS REQUIRED
36 BY THIS SUBSECTION.

37
38 ~~(H) (I)~~ (1) EACH APPLICANT FOR A BUILDING PERMIT FOR CONSTRUCTION OF A
39 COMMERCIAL TELECOMMUNICATION FACILITY AND EACH APPLICANT FOR A ZONING
40 CERTIFICATE OF USE FOR A COMMERCIAL TELECOMMUNICATION FACILITY SHALL SUBMIT
41 A CERTIFICATION FROM AN INDEPENDENT CONSULTANT ACCEPTABLE TO THE DIRECTOR
42 OF THE DEPARTMENT OF INSPECTIONS AND PERMITS THAT THE FACILITY OR THE
43 APPLICANT'S USE OF THE FACILITY WILL NOT DEGRADE OR INTERFERE WITH THE
44 COUNTY'S PUBLIC SAFETY COMMUNICATION SYSTEMS.

45
46 (2) IF AT ANY TIME THE FACILITY OR USE OF THE FACILITY DEGRADES OR
47 INTERFERES WITH THE COUNTY'S PUBLIC SAFETY COMMUNICATION SYSTEM, THE
48 BUILDING PERMIT OR THE CERTIFICATE OF USE, AS APPLICABLE, MAY BE REVOKED.

49
50 ~~(H) (K)~~ (1) AN APPLICANT FOR A CERTIFICATE OF USE FOR A COMMERCIAL
51 TELECOMMUNICATION FACILITY WITHIN 30 DAYS AFTER THE ISSUANCE OF A ZONING
52 CERTIFICATE OF USE FOR A COMMERCIAL TELECOMMUNICATIONS FACILITY AND BY
53 SEPTEMBER 1 OF EACH YEAR THEREAFTER, THE HOLDER OF THE CERTIFICATE SHALL
54 SUBMIT A CERTIFICATION FROM AN ENGINEER ACCEPTABLE TO THE DIRECTOR OF THE

DEPARTMENT OF INSPECTIONS AND PERMITS OF THE RADIO FREQUENCY RADIATION ACTUALLY MEASURED FROM THE FACILITY. THAT THE MEASUREMENTS ARE ACCURATE, AND THAT THE MEASUREMENTS MEET THE APPLICABLE FEDERAL COMMUNICATIONS COMMISSION STANDARDS AND GUIDELINES FOR THOSE EMISSIONS.

~~(2) EACH OWNER AND USER OF A COMMERCIAL TELECOMMUNICATION FACILITY SHALL SUBMIT A CERTIFICATION AS DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION BY SEPTEMBER 1 OF EACH YEAR.~~

~~(2)~~ IF AT ANY TIME THE OWNER OR USER OF THE TELECOMMUNICATION FACILITY CANNOT PROVIDE THE CERTIFICATION REQUIRED BY PARAGRAPH ~~(2)~~ (1) OF THIS SUBSECTION, THE CERTIFICATE OF USE MAY BE REVOKED.

Title 12. Additional Requirements For Special Exceptions

12-215.1. Commercial telecommunication facilities.

(a) A commercial telecommunication facility is permitted in any residential or deferred development district, provided THAT:

(1) [the facility] EACH STRUCTURE PERMANENTLY LOCATED ON THE GROUND is a monopole;

(2) each structure PERMANENTLY LOCATED ON THE GROUND complies with the principal structure setbacks and lot area requirements of the zoning district where located;

(3) each structure PERMANENTLY LOCATED ON THE GROUND is located at least 200 feet or one foot for each foot of height [from any existing offsite dwelling], whichever is greater, FROM THE PROPERTY LINE OF A:

(I) LOT WITHIN A RESIDENTIAL DISTRICT;

(II) RESIDENTIALLY OCCUPIED PROPERTY;

~~(II)~~ (III) SCHOOL;

~~(III)~~ (IV) PUBLIC PARK; OR

~~(IV)~~ (V) PLATTED COMMUNITY RECREATIONAL AREA;

[(4) each structure is set back at least one foot for each foot of height from the property line of any adjoining school or public park;

(5)] (4) accessory structures are screened from [any] adjoining [residential] RESIDENTIALLY-ZONED OR RESIDENTIALLY-DEVELOPED property in accordance with [§4-207] TITLE 9 of this article[where the property is developed residentially or there is a reasonable possibility of its being developed residentially]; [and]

[(6)] (5) the [facility] HEIGHT OF A STRUCTURE PERMANENTLY LOCATED ON THE

GROUND does not exceed:

(i) FOR ONE PROVIDER, 100 feet [in height for one provider], or 130 feet if [the structure is] on government-owned land; and

(ii) FOR TWO OR MORE PROVIDERS, 140 feet [in height for two or more providers], or 170 feet if [the structure is] on government-owned land[.];

(6) THE APPLICANT PROVIDES AFFIRMATIVE PROOF IN A DETAILED SWORN STATEMENT THAT ALL POTENTIAL COMMERCIAL ZONED SITES WITHIN 2,500 FEET OF THE PROPOSED SITE HAVE BEEN EXHAUSTED, WHICH STATEMENT SHALL INCLUDE:

(I) THE NAMES, ADDRESSES, AND TELEPHONE NUMBERS OF ALL OWNERS OF COMMERCIAL ZONED PROPERTY WITHIN A 2,500 FOOT RADIUS OF THE PROPOSED SITE;

(II) THE REASONS THAT COMMERCIAL ZONED PROPERTY WITHIN A 2,500 FOOT RADIUS OF THE PROPOSED SITE IS NOT SUITABLE, INCLUDING SPECIFIC STATEMENTS AS TO WHETHER:

1. THE APPLICANT'S USE IS COMPATIBLE WITH OTHER USES OF THE SITE;

2. THE PROPERTY OWNER WILL ALLOW USE OF THE SITE; AND

3. THE MAXIMUM TOWER HEIGHT ACCOMMODATED BY THE SITE IS SUITABLE FOR THE APPLICANT'S USE; AND

(7) THE APPLICANT PROVIDES AFFIRMATIVE PROOF IN A DETAILED SWORN STATEMENT THAT ALL ATTEMPTS TO CO-LOCATE THE PROPOSED COMMERCIAL TELECOMMUNICATION FACILITY ON THE FIVE GEOGRAPHICALLY CLOSEST COMMERCIAL TELECOMMUNICATION FACILITIES HAVE BEEN EXHAUSTED, WHICH STATEMENT SHALL INCLUDE:

(I) THE ADDRESSES OR DESCRIPTIVE LOCATIONS OF THE FIVE GEOGRAPHICALLY CLOSEST COMMERCIAL TELECOMMUNICATION FACILITIES;

(II) THE NAMES, ADDRESSES, AND TELEPHONE NUMBERS OF THE OWNERS AND OPERATORS OF THE FIVE GEOGRAPHICALLY CLOSEST COMMERCIAL TELECOMMUNICATION FACILITIES; AND

(III) THE REASONS THAT THE FIVE GEOGRAPHICALLY CLOSEST COMMERCIAL TELECOMMUNICATION FACILITIES ARE NOT SUITABLE FOR CO-LOCATION, INCLUDING SPECIFIC STATEMENTS AS TO WHETHER:

1. THE LOCATION, HEIGHT, OR NATURE OF THE FACILITY WOULD MAKE IT UNSUITABLE FOR APPLICANT'S NEEDS;

2. PHYSICAL, ELECTROMAGNETIC, OR OTHER INTERFERENCE WOULD MAKE THE COMMERCIAL TELECOMMUNICATION FACILITY UNSUITABLE FOR APPLICANT'S NEEDS;

3. APPLICANT'S USE OF THE COMMERCIAL TELECOMMUNICATION FACILITY WOULD INTERFERE WITH OTHER USERS;

4. STRUCTURALLY IMPROVING THE FACILITY FOR THE APPLICANT'S USE

1 WOULD COST MORE THAN 50% OF THE FACILITY'S ORIGINAL COST; AND
2

3 5. ADDING THE APPLICANT'S USE TO THE FACILITY WOULD MAKE THE
4 FACILITY TALLER THAN WOULD BE PERMITTED ON THE SITE.
5

6 (b) In addition to meeting the requirements of subsections (a)(2) through [(5)] (4), (6) AND
7 (7) of this section, a commercial telecommunication facility is permitted in a Maritime Group
8 B, Maritime Group C, or Open Space District, provided [the tower, antenna, or monopole]
9 THAT THE HEIGHT OF A STRUCTURE PERMANENTLY LOCATED ON THE GROUND does not
10 exceed:
11

12 (i) FOR ONE PROVIDER, 130 feet [in height for one provider], or 160 feet if [the
13 structure is] on government-owned land; [and]
14

15 (ii) FOR TWO PROVIDERS, 170 feet [in height for two or more providers], or 200
16 feet if [the structure is] on government-owned land;
17

18 (iii) FOR THREE PROVIDERS, 210 feet [in height for three providers], or 240 feet
19 if [the structure is] on government-owned land; and
20

21 (iv) FOR FOUR OR MORE PROVIDERS, 250 feet [in height for four or more
22 providers].
23

24 SECTION 2. *And be it further enacted*, That all owners and users of commercial
25 telecommunication facilities shall comply with Article 28, § 1-128(a) and (c) and § 10-125(i),
26 (k), and (l) within 180 days of the date that this Ordinance takes effect.
27

28 Section 3. *And be it further enacted*, that the provisions of § 12-215.1 of this article shall
29 not apply to an application for a special exception for a commercial telecommunications
30 facility that was submitted to the Office of Planning and Zoning before November 19, 2001.
31

32 SECTION 34. *And be it further enacted*, That this Ordinance shall take effect 45 days
33 from the date it becomes law.

AMENDMENTS ADOPTED December 17, 2001
1

COUNTY COUNCIL OF ANNE ARUNDEL COUNTY,
MARYLAND

Legislative Session 2002, Legislative Day No. 29

Bill No. 64-02

Introduced by Mr. Burlison, Chairman
(by request of the County Executive)

By the County Council, July 15, 2002

Introduced and first read on July 15, 2002
Public Hearing set for August 5, 2002 and held on August 19, 2002

By Order: Judy C. Holmes, Administrative Officer

A BILL ENTITLED

1 AN EMERGENCY ORDINANCE concerning: Zoning - Commercial
2 Telecommunication Facilities

3
4 FOR the purpose of amending Bill No. 93-01; adding requirements for
5 the application for a certificate of use; clarifying that only the
6 principal structure of a facility is required to be a monopole in certain
7 districts; adding conditions for co-location on transmission line poles or towers;
8 allowing co-location on facilities existing prior to December 31,
9 2001, that do not comply with setbacks effective after December 31,
10 2001; allowing co-location on nonresidential structures that are not commercial
11 telecommunication facilities and on multi-family dwelling units with more than ten units
12 under certain circumstances; allowing accessory structures within 50 feet of
13 principal structures existing prior to December 31, 2001, even though
14 the accessory structures do not comply with setbacks effective after
15 December 31, 2001; requiring screening and buffering from all residentially zoned
16 or used properties; not permitting co-location of a facility that is located on a property
17 with a water tower that is adjacent to a public park ; and generally relating to
18 commercial telecommunication facilities.

19
20 BY repealing and reenacting, with amendments: Bill No. 93-01, Section
21 2

22 Laws of Anne Arundel County, Maryland

23
24 BY adding: Article 28, §§1-128(f) and 10-125(l), and (m), (n), (o), and (p) (as
25 amended by Bill 93-01)

Anne Arundel County Code (1985, as amended)

EXPLANATION: CAPITALS indicate new matter added to existing law.

[Brackets] indicate matter stricken from existing law.

BY repealing and reenacting, with amendments: Article 28, §§1-128(a)(as amended by Bill 93-01); 2-204(b)(8); and 12-215.1(a)(1) (as amended by Bill 93-01) Anne Arundel County Code (1985, as amended)

SECTION 1. *Be it enacted by the County Council of Anne Arundel County, Maryland, That Bill No. 93-01, Section 2, Laws of Anne Arundel County, Maryland be amended to read as follows:*

SECTION 2. *And be it further enacted, That all owners and users of commercial telecommunication facilities shall comply with Article 28, §1-128(a) and (c) and [§10-125(i), (k), and (l)] §10-125(J) AND (K) within 180 days of the date this Ordinance takes effect.*

SECTION 2. *And be it further enacted, That Section(s) of the Anne Arundel County Code (1985, as amended) read as follows:*

ARTICLE 28

Title 1. General Provisions

1-128. Zoning certificate of use.

(a) Except for a single-family residence, no premises or structure, including a commercial telecommunication facility and a nonconforming use, may be used or altered until a zoning certificate of use is issued by the Department of Inspections and Permits. [Alteration of a commercial communication facility includes any change in configuration, transmit frequency, or power level.]

(F) (1) APPLICATION FOR A CERTIFICATE OF USE OF A COMMERCIAL TELECOMMUNICATION FACILITY SHALL INCLUDE THE CONFIGURATION, TRANSMIT FREQUENCY RANGE, AND MAXIMUM POWER RANGE AT WHICH THE FACILITY IS EXPECTED TO OPERATE.

(2) ALTERATION OF A COMMERCIAL COMMUNICATION FACILITY INCLUDES ANY CHANGE IN CONFIGURATION, TRANSMIT FREQUENCY RANGE, OR MAXIMUM POWER LEVEL.

Title 2. Residential Districts

2-204. Permitted uses; conditional uses.

(b) The following uses are permitted as conditional uses in an RA-Agricultural Residential District:

(8) commercial telecommunication facilities:

(i) on land owned by a governmental entity or a volunteer fire company, in accordance with the provisions of § [12-215A] 12-215.1 of this article; or

(ii) located within a transmission line right-of-way AND NOT ATTACHED TO A TRANSMISSION LINE POLE OR TOWER or within 100 feet of a transmission line right-of-way if [the facility]:

1. THE PRINCIPAL STRUCTURE OF THE FACILITY is set back at least 500 feet from any offsite dwelling;

2. THE FACILITY does not exceed 199 feet in height; [and]

~~3. THE PRINCIPAL STRUCTURE OF A FACILITY THAT IS PERMANENTLY LOCATED ON THE GROUND is a monopole, provided that, if the connecting transmission line structures are lattice-type, the PRINCIPAL STRUCTURE OF A FACILITY THAT IS PERMANENTLY LOCATED ON THE GROUND may be lattice-type;~~

3. THE PRINCIPAL STRUCTURE OF A FACILITY THAT IS PERMANENTLY LOCATED ON THE GROUND is a monopole[, provided that, if the connecting transmission line structures are lattice-type, the facility may be lattice-type];

4. ACCESSORY STRUCTURES ARE EITHER LOCATED WITHIN 50 FEET OF THE PRINCIPAL STRUCTURE OR ARE SETBACK 500 FEET FROM ANY OFF-SITE DWELLING; AND

5. THE APPLICANT HAS NOTIFIED THE UTILITY THAT OWNS THE RIGHT-OF-WAY AND HAS RECEIVED DESIGN INPUT FROM THE UTILITY; OR

(III) ATTACHED TO A TRANSMISSION LINE POLE OR TOWER, PROVIDED THAT:

1. THE FACILITY DOES NOT LATERALLY PROJECT MORE THAN 15 FEET BEYOND THE CROSSARMS OR OTHER SUPPORT EXTENSIONS AFFIXED TO THE POLE OR TOWER;

2. THE FACILITY DOES NOT PROJECT ABOVE THE TOP OF THE POLE OR TOWER BY MORE THAN 15 FEET IF THE POLE OR TOWER WILL SUPPORT ONE PROVIDER OR 25 FEET IF THE POLE OR TOWER WILL SUPPORT MORE THAN ONE PROVIDER;

3. THE POLE OR TOWER, INCLUDING ALL PROJECTIONS, DOES NOT EXCEED 199 FEET IN HEIGHT; AND

4. ALL ACCESSORY STRUCTURES ARE MAINTAINED UNDERNEATH OF THE TRANSMISSION LINE WITHIN THE DRIP LINE OF THE OUTERMOST LINES OR ARE SET BACK FROM THE EDGE OF THE TRANSMISSION LINE RIGHT-OF-WAY A DISTANCE EQUAL TO AT LEAST THE MINIMUM SETBACK REQUIRED FOR ACCESSORY STRUCTURES IN THE ZONING DISTRICT.

10-125. Commercial telecommunication facilities.

(L) A COMMERCIAL TELECOMMUNICATION FACILITY MAY CO-LOCATE ON A COMMERCIAL TELECOMMUNICATION FACILITY EXISTING AS OF DECEMBER 31, 2001, WITHOUT MEETING SETBACK REQUIREMENTS THAT BECAME EFFECTIVE AFTER DECEMBER 31, 2001.

(M) A COMMERCIAL TELECOMMUNICATION FACILITY MAY CO-LOCATE ON EXISTING NONRESIDENTIAL STRUCTURES OTHER THAN COMMERCIAL TELECOMMUNICATION FACILITIES AND ON MULTI-FAMILY DWELLINGS WITH MORE THAN TEN UNITS WITHOUT MEETING THE SETBACK REQUIREMENTS APPLICABLE TO COMMERCIAL TELECOMMUNICATION FACILITIES PROVIDED THAT, FOR ROOFTOP INSTALLATIONS, THE PRINCIPAL STRUCTURE IS AT LEAST 50 FEET IN HEIGHT ABOVE GRADE LEVEL AND THE COMMERCIAL TELECOMMUNICATION FACILITY SHALL NOT EXTEND ABOVE THE EXISTING ROOF HEIGHT MORE THAN 15 FEET.

~~(M)~~(N) IF THE PRINCIPAL STRUCTURE OF A COMMERCIAL TELECOMMUNICATION SYSTEM EXISTED AS OF DECEMBER 31, 2001, ACCESSORY STRUCTURES ARE PERMITTED WITHIN 50 FEET OF THE PRINCIPAL STRUCTURE WITHOUT MEETING APPLICABLE SETBACK REQUIREMENTS THAT BECAME EFFECTIVE AFTER DECEMBER 31, 2001.

(O) SCREENING AND BUFFERING SHALL BE PROVIDED AT EACH COMMERCIAL TELECOMMUNICATIONS FACILITY SO THAT THE ACCESSORY STRUCTURES MAY NOT BE SEEN FROM ABUTTING RESIDENTIAL PROPERTIES.

(P) A COMMERCIAL TELECOMMUNICATIONS FACILITY MAY NOT CO-LOCATE ON AN EXISTING WATER TOWER THAT IS LOCATED ON A PROPERTY THAT IS CONTIGUOUS TO A PUBLIC PARK.

Title 12. Additional Requirements For Special Exceptions

12-215.1. Commercial telecommunication facilities.

(a) A commercial telecommunication facility is permitted in any residential or deferred development district, provided that:

(1) each PRINCIPAL structure permanently located on the ground is a monopole;

SECTION 3. *And be it further enacted,* That this Ordinance is hereby declared to be an emergency ordinance and necessary for the immediate preservation of the public peace, health, safety, welfare, and property, and being passed by the affirmative vote of five members of the County Council, the same shall take effect on the date it becomes law.

AMENDMENTS ADOPTED: August 19, 2002

READ AND PASSED this 19th day of August, 2002

By Order:

Judy C. Holmes
Administrative Officer

PRESENTED to the County Executive for her approval this 20th day of August, 2002

Judy C. Holmes
Administrative Officer

APPROVED AND ENACTED this _____ day of August, 2002

Janet S. Owens
County Executive